

S 16604

CONGRESSIONAL RECORD — SENATE

October 17, 1986

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, I echo the leader's comments in expressing appreciation to the parties on this particular dispute. Let me indicate to the Senate.

The PRESIDING OFFICER. Will the Senate please be in order?

Mr. HATFIELD. Mr. President, let me indicate to the Senate we have one remaining issue. We, by the previous unanimous consent request, agreed to separate the Goldwater amendment, and have disposed of it.

Now we have the underlying amendment by the Senator from South Dakota [Mr. ABDNOR] relating to Federal buildings. There has been an attempt to work out a modification of the Abdnor amendment that would take care of a number of objections. That is not quite ready.

In the meantime, I understand the Senator from Minnesota, Senator DURENBERGER, chairman of the Senate Intelligence Committee, would like to enter into a colloquy. So I would only say that we are diverting the action of the Senate momentarily for that colloquy, hoping that by the end of that colloquy the Senator from South Dakota will have arrived at a common agreement.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I would have risen at this point with an amendment.

The PRESIDING OFFICER. The Senate is not in order. Will the Senators who are engaged in conversations on the floor please retire to the Cloakrooms? The Senate should be in order.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as I indicated, I would have risen at this point with an amendment to the Abdnor amendment. But given the state of affairs that we try to keep the Government alive, I have made the decision not to propose an amendment at this time but the Senator from Maine [Mr. COHEN] and I both feel very strongly about this issue, and felt it was appropriate to bring the matter to the attention of our colleagues and to indicate that when the 100th Congress convenes we intend to do something about this.

Mr. President, only yesterday evening was I informed of the existence in the conference report on the continuing resolution received from the House of Representatives of the following section:

Sec. 9126. Notwithstanding the provisions of subsection 502(A) of the National Security Act of 1947, funds appropriated by this Act may be obligated and expended for particular intelligence activities contained in this act: *Provided*, That the funds appropriated or made available by this Act may be obligated and expended for the particular activities contained in this Act should the

enactment of a National Defense Authorization Act for fiscal year 1987 fail to occur and this Act shall then be considered to provide the authorization and appropriation authority necessary to obligate and expend the funds provided herein.

□ 1550

This provision is ill advised and represents an unwarranted intrusion on the authorization process for intelligence programs. It also encourages further intrusions on intelligence authorization on behalf of interests of members of the Appropriations Committees, especially the defense subcommittees, both in the Senate and the House.

This provision was included in the continuing resolution without—as far as I am aware—any consultation with the members of the intelligence committee of either House. This is especially serious in the Senate.

When the Select Committee on Intelligence was created in 1976 and its authorization authority established, it was deliberately insured that there would be an overlapping membership between the appropriations committees and the intelligence committees of at least two Members. In fact, today, Mr. President, there are three crossover Members, including the ranking member of the intelligence committee.

Mr. President, when the Select Committee on Intelligence was established in 1976, its founding resolution—Senate Resolution No. 400 of that year—specified that funds could not be appropriated for the activities of intelligence agencies except if there were an authorization for these activities by the Senate. The only exception was in the case of continuing resolutions, since these might be required to permit such activities to proceed in the event no authorization had been passed.

Just last year, section 502 of the National Security Act was enacted to further clarify the relationship between the authorization and appropriations processes for intelligence programs. Section 502 clarified the ways in which appropriated funds could be made available for intelligence activities. Subsection 502(a)(1) specifies that appropriated funds made available for an intelligence activity may be obligated or expended only if the funds were specifically authorized by Congress for such use.

After 14 hours on the T-46 trainer there is no question, Mr. President, that there has been considerable tug and pull between the authorization and the appropriations committees of this body for several years.

The executive branch has occasionally been tempted to exploit these tensions. Subsection 502(a)(1) of the National Security Act was adopted in recognition of the inadvisability extending this state of affairs into the intelligence world.

The intelligence committees of the House and Senate take very seriously

their annual review of the budgets for intelligence programs. Numerous hearings are held by the committees with senior intelligence officials and untold hours are dedicated by the staff to the review of the voluminous budget submissions of the intelligence agencies. Last year, the Director of Central Intelligence also agreed to submit each year to the intelligence committees a National Intelligence Strategy document to help further rationalize the setting of budgetary priorities and the allocation of available resources in relation to the multiple objectives of the national intelligence program.

Mr. President, let me be frank. There are significant discrepancies today in the funding levels established in the Intelligence Authorization Act, which was adopted by this Congress 2 weeks ago and those contained in the conference report on the continuing resolution before us today. I cannot describe the nature of the discrepancies because they involve highly classified matters.

The funding levels for certain programs are substantially different, in a way that undermines the results of the hard work and dedicated effort put into establishing these levels by the authorization committees and the intelligence community.

It is obvious to me that this situation is well understood by the interested members of the Appropriations Committee, particularly the Defense Subcommittee, and their staffs. Nevertheless, this important matter was never brought to my attention, nor—as far as I am aware—to the attention of any of the Intelligence Committee members on the Appropriations Committee prior to completion of the conference report.

Mr. President, it is an unacceptable state of affairs when as a result of the appropriations process the hard work of the authorizing committees and the intelligence community itself in establishing correct budgetary priorities is significantly unraveled. This situation is not only undesirable in itself but a portent for the future. Decisions on the funding of key intelligence programs have thus far been kept largely immune from this sort of legislative maneuvering.

This provision in the continuing resolution cannot be undone now, since to seek its deletion at this time could further delay the conclusion of business by the Senate for this session. But this provision cannot be allowed to stand either, and I will introduce legislation during the next session to repeal it.

Finally, Mr. President, I wish to comment on an inaccurate implication contained in section 9126 of this resolution which, in my opinion, is not very well drafted.

The proviso clause tends to imply that the Defense Authorization Act is the source of legislative authorizations for intelligence programs. This is in-

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Notwithstanding any other provisions of this Act, no funds shall be appropriated for the procurement of T-46 aircraft in Fiscal Year 1987. Funds appropriated in FY-86 for the procurement of T-46 aircraft shall be available to conduct the competitive fly-off set forth in sec. 145 of the FY-87 Defense Authorization Act: *provided* that such funds shall not be available for the modification or development of any candidate aircraft for the purposes of that competition. Such competition shall be completed by January 1, 1988. The Air Force shall proceed immediately to prepare for the required competition mandated by Section 145: *provided further*, that section 2304 of said Act (S. 2638) shall not be interpreted to apply to any funds provided for operation and maintenance, design funds, or military construction funds for other than major military construction projects at any military installation or facility.

□ 1540

The PRESIDING OFFICER. The amendment is so modified.

Is there further debate on this amendment?

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I will not take much time. We spent an awful lot of time unnecessarily on this amendment. I want to assure the Senate and my colleagues that what we have worked out here is a far cry from what was originally in the bill that was called to the attention of the Senate by my distinguished colleague from Arizona.

Essentially the compromise we have worked out here comes down to this basic premise: that basic premise is we will have a competitive flyoff directed by the Secretary of the Air Force, no procurement funds for any additional T-46 aircraft will be expended.

The Secretary of the Air Force has personally assured me that he will resist and turn down any pressure that might be coming from any manufacturer connected with the fund and operation during the test period, that the most this is going to cost the taxpayers of the United States is no more than \$20 million. That is an awful lot of money, but that is a far cry from what I think we would have been exposed to as taxpayers had we not written the restraints into the compromise that has been reached. Therefore, I am in support of it.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Have the yeas and nays been vitiated? I beg your pardon. The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Have the yeas and nays been ordered?

The PRESIDING OFFICER. The Chair has been advised by the Parliamentarian that the yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Is there further debate on the amendment?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I do not intend to have protracted debate. I will ask this of the Senator from Arizona, and the Senator from Virginia. It is my understanding that the statement of the managers accompanying the continuing resolution includes language that directs the Secretary of the Air Force to reform the lot II production contract for the T-46. It is also my understanding that that direction to the Secretary of the Air Force is no longer appropriate since we have now mandated a competition that will be completed after the expiration of the lot II production option.

Therefore, if the T-46 is the winner of the proposed competition, any further procurement beyond lot I will require new contracts. Is that the understanding?

Mr. GOLDWATER. Yes. I say to my friend from the New York that is my understanding.

Mr. D'AMATO. Mr. President, let me say that though I am not enthusiastic in terms of the resolve that we have accomplished, it certainly at least gives us an opportunity to compete in a flyoff that I believe ultimately will demonstrate that the T-46 is no answer for our trainer. There is still uncertainty in terms of what this agreement will mean. Certainly if we were to have voted upon the amendment of my distinguished colleague from Arizona, there was no doubt that we would be lucky to get 8, 9, or 10 votes in opposition. So I believe at least it gives an opportunity for Fairchild to be in a competitive position in the future.

There will be some bargaining. We do not know if the House will accept or reject. They have indicated a very strong feeling and sentiment on their part in opposition to language and to a position that might deter production of the T-46. However, at some point in time we have to do the business of the people. And, I believe at the very least, we will give them an opportunity to demonstrate the merits of this plane which I am still very much convinced is really the answer to our training needs.

I thank those who have helped—Senator RUDDMAN in particular, Senator WARNER for attempting to find a common ground upon which the legitimate interests and needs of both parties or both sides of this could result in this compromise. Senator STEVENS

certainly and his committee have done yeoman's work.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I will just speak briefly to supplement the remarks of my distinguished colleague, Mr. D'AMATO on the agreement we have reached under the duress of not having the votes to achieve another agreement, but we have done one thing. We are assured there will be competition in which the T-46 will fly as a candidate for the trainer for the next generation of Air Force pilots. We will be forgiven perhaps in our judgment that in that competition it will prevail.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOLE. Mr. President, I want to take 1 minute to thank all who have been very helpful. This has been going on now for almost 24 hours. I think there was a few hours between 3 a.m. and 9 a.m. when people were sleeping. But beyond that, it has been almost continuous. There are a number of people who have been very helpful.

I want to thank the distinguished chairman of the committee, Senator GOLDWATER for his youthful patience, the distinguished Senator from Virginia, the Senator from Nebraska, both Senators from New York, all others, and in particularly the chairman of the Appropriations Committee. My view is it is a satisfactory resolution. I hope the House will accept it.

While I am on that topic, let me indicate I have just come from visiting with the Speaker. The House Members would like to know whether they can go home this weekend or not. It is a question of whether or not the Senate can finish its work tonight.

I indicated I thought we could, that this was the last stumbling block. I think Senator BYRD and I plan to confer with them again at 5:15 to give them a final answer. So I would say to my Senate colleagues if we want to go home sine die this weekend, we would really appreciate your help.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 3477), as modified, was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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correct. The defense bill contains only the budgetary figures for classified intelligence programs all of which are aggregated in certain ways for publica-

tion in the unclassified defense budget. Actually, the specific authorizations for intelligence programs are adopted by the Intelligence Commit-

tees and they are contained only in the Intelligence Authorization Act, which I indicated to my colleagues was passed by the Congress 2 weeks ago.

NOTICE

Incomplete record of Senate proceedings. Except for the following matter Senate proceedings for today will be continued in Part II.

ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, has my good friend from Hawaii anything further or any business he wishes to conduct?

Mr. MATSUNAGA. No.

ORDERS FOR SATURDAY

RECESS UNTIL 11 A.M.

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 11:00 a.m. on Saturday, October 18, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, following the recognition of the two lead-

ers under the standing order, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. STEVENS. Mr. President, at 11:30 a.m., the Senate will turn to the consideration of any legislative or executive calendar items cleared for action. A number of items have been cleared and will pass by unanimous consent. Rollcall votes will not occur, and the Senate is not likely to be in session late on Saturday afternoon.

I am informed that the Senate will adjourn sine die mid- or late-afternoon on tomorrow, which will be good news for all of us.

Mr. MATSUNAGA. Speaking for those on this side, certainly it is good news.

RECESS UNTIL 11 A.M. TODAY,
SATURDAY, OCTOBER 18, 1986

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess in accordance with this order we have just entered.

There being no objection, at 12:48 a.m., the Senate recessed until today, Saturday, October 18, 1986, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate October 17, 1986:

FEDERAL HOME LOAN BANK BOARD

Lawrence J. White, of New York, to be a member of the Federal Home Loan Bank Board for the term of 4 years expiring June 30, 1990, vice Mary A. Grigsby, resigned.